

FILE COPY

FILED
DEC 14 1970

F. ROBERTSON, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

**LOU BERTHA LABINE, Natural Tutrix of the minor child,
Rita Nell Vincent,**

Appellant,

versus

**SIMON VINCENT, Administrator of Succession of
Ezra Vincent,**

Appellee.

Appeal from the Supreme Court of Louisiana

BRIEF FOR APPELLEE

**JAMES A. LEITHEAD
NORMAN F. ANDERSON
Counsel for Appellee
117 West Broad Street
(Post Office Box 1299)
Lake Charles, Louisiana 70601**

TABLE OF CONTENTS

	Page
Table of Authorities	ii
Statement of Case	1
Statement of Issues	2
Argument:	
1. Are the provisions of the Louisiana Civil Code which make a distinction between the rights of inheritance of legitimate and illegitimate children violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?	3
2. Is the regulation of descent and distribution of real and personal property a matter of State law?	8
3. Should the holdings of <i>Levy</i> and <i>Glon</i> apply to the Louisiana succession laws and change the intestacy transmission of real property?	12
4. Did the decedent intend that his heirs inherit under the intestacy laws of Louisiana.	13
5. If the distinction between the inheritance of legitimate and illegitimate children under the Louisiana succession laws are unconstitutional, should this rule be applied retroactively so as to divest vested rights in real property?	15
Conclusion	17

II

TABLE OF AUTHORITIES

Page

Cases:

<i>American Land Company vs Zeiss</i> , 219 US 47, 31 Sup Ct 200, 55 L Ed 82 (1910)	10
<i>Escobedo vs Illinois</i> , 378 US 478 (1964)	16
<i>Frederickson vs Louisiana</i> , 23 How 445, 16 L Ed 192 (1876)	8
<i>Glon vs American Guarantee & Liability In- surance Company</i> , 391 US 73; 88 Sup Ct 1515; 20 L Ed 2d 441 (1968)	12
<i>Hamilton vs Brown</i> , 161 US 256, 16 S Ct 585, 40 L Ed 691	11
<i>Harris vs Zion Savings Bank & Trust Co.</i> , 317 US 447, 63 Sup Ct 354, 87 L Ed 390 (1943)	8
<i>Henry vs Jean</i> , 238 La 314; 115 So 2d 363 (1959) ..	16
<i>Johnson vs New Jersey</i> , 384 US 719 (1966)	16
<i>Levy vs State of Louisiana</i> , 391 US 68; 88 Sup Ct 1509; 20 L Ed 2d 436 (1968)	12
<i>Lindsley vs Natural Carbonic Gas Co.</i> , 220 US 61, 55 L Ed 369, 31 Sup Ct 337; Ann Cas 1912C 160	7
<i>Miranda vs Arizona</i> , 384 US 436 (1966)	16
<i>Morey vs Doud</i> , 354 US 457, 1 L Ed 2nd 1485, 77 Sup Ct 1344 (1957)	6
<i>Murphy vs Houma Well Service</i> , 43 Fed 2d 509 (5th Circ., 1969)	13

III AUTHORITIES (Continued)

	Page
<i>Roschen vs Ward</i> , 279 US 337 (1929)	5
<i>Strahan vs Strahan</i> , 304 F. Supp. 40 (WD La, 1969)	7, 10, 12
<i>Succession of Simms</i> , 195 So 2d 114, 250 La 177 (1967)	15
<i>United States vs Burnison</i> , 339 US 87, 70 Sup Ct 503, 94 L Ed 675 (1950)	6
<i>United States vs Fox</i> , 94 US 315, 24 L Ed 192 (1950)	8

Statutes:

Louisiana Civil Code of 1870

Article 24	3
Article 26	4
Article 198	14
Article 202	9
Article 206	9
Article 214	14
Article 223	5
Article 238	4
Article 256	4
Article 683	5
Article 918	4, 16
Article 919	4, 8, 16

IV
AUTHORITIES (Continued)

	Page
Article 920	16
Article 1493	5
Article 1494	5
Louisiana Revised Statutes 9:571	5
Other Authorities:	
10 Ame. Jur. 2d 956, p. 153	16
23 Ame. Jur. 2d 757, p. 10	13
3 Planoil, Civil Law, etc.	13
33 Tulane Law Review 43 (1958)	9

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of the minor
child, Rita Nell Vincent,

Appellant,

versus

SIMON VINCENT, Administrator of Succession of
Ezra Vincent,

Appellee.

Appeal from the Supreme Court of Louisiana

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This is a contest over the estate of Ezra Vincent between his illegitimate daughter and his brothers and sisters.

He died intestate on September 16, 1968, in Rapides Parish, Louisiana, where he was hospitalized for treatment. He was 76 years of age. For many years prior to his death, the decedent had his domicile and residence in Calcasieu Parish, Louisiana, where he owned movable and immovable property. (A. 10)

At the time of his death, the decedent was survived by no spouse, no ascendants nor legitimate descendants. He was survived by brothers and sisters. By notarial act dated May 10, 1962, the decedent acknowledged to be the natural father of the minor, Rita Nell Vincent. (A. 10) At the time of the trial, she was receiving \$100.00 per month from the Veteran's Administration and Social Security pensions.

The trial court found as a matter of fact that the decedent was survived by brothers and sisters and held that under the applicable Louisiana law the illegitimate child could not inherit from her natural father to the exclusion of these collateral heirs, and denied alimony for her support since she was receiving \$100.00 per month and was not in need, which was a prerequisite under the State statute.

STATEMENT OF ISSUES

1. Are the provisions of the Louisiana Civil Code which make a distinction between the rights of inheritance of legitimate and illegitimate children violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?
2. Is the regulation of descent and distribution of real and personal property a matter of State law?
3. Should the holdings of *Levy* and *Glon* apply to the Louisiana succession laws and

change the intestacy transmission of real property?

4. Did the decedent intend that his heirs inherit under the intestacy laws of Louisiana.
5. If the distinction between the inheritance of legitimate and illegitimate children under the Louisiana succession laws are unconstitutional, should this rule be applied retroactively so as to divest vested rights in real property?

ARGUMENT

I.

The Louisiana Civil Code Articles Distinguishing Between Legitimate And Illegitimate Children For The Purpose Of Laws Of Intestate Successions Are Constitutional, And Do Not Violate The Fourteenth Amendment.

The succession laws relating to illegitimate children are found in the chapter of the Louisiana Civil Code which relates to "Of Irregular Successions". This chapter treats illegitimates differently from legitimates, based upon the principle announced in Article 24 of the Louisiana Civil Code:

"Laws on account of differences of condition have established between persons essential differences with respect to their civil, social and political rights."

Some of the distinctions drawn by the Louisiana Civil Code reflect the natural law concepts which have influenced human action for generations. For example, the Code recognizes that natural mothers possess stronger ties with their children than fathers by providing in Article 918 that illegitimate children recognized by their natural mothers shall inherit their mother's succession to the exclusion of her legitimate parents or collaterals. On the other hand, the illegitimate child of the father is not accorded such a high rank in his succession under the provisions of Article 919, which provides that natural children of the father are called to his inheritance only when he has left no descendants, ascendants or collateral relations, or surviving wife. This principle again appears in Louisiana Civil Code Article 256, which establishes the natural mother as tutrix of her natural child not acknowledged by the father, or acknowledged by him alone without her concurrence.

The complementary nature of rights and duties existing between parents and children illustrate the rationality of the Louisiana Civil Code classification based upon legitimacy. Article 26 states that birth subjects legitimate children to the power and authority of their parents. Article 238, on the other hand, provides that illegitimate children are not subject to parental authority even if they have been legally acknowledged. Thus, an illegitimate child is free from the restrictions and control which might be exercised by his parents. The illegitimate child need not submit to parental discipline or obtain parental consent to enter into contracts, including the contract of marriage. The legitimate child cannot sue either parent during the con-

tinuation of their marriage under the provisions of Louisiana Revised Statute 9:571. However, the illegitimate child suffers no such disability. The illegitimate child has free use of his property, but Louisiana Civil Code Article 223 grants a right of enjoyment in favor of the parents on the estate of legitimate children during their minority. The legitimate father is the administrator of the estate of his minor child and may bring actions on his behalf by a provision of Louisiana Code of Civil Procedure, Article 683. It is entirely reasonable that an illegitimate child, free from these various forms of parental control and burdens on his estate, should be placed in a different position for the purpose of the laws of inheritance.

The entire Louisiana Civil Code presupposes that the fundamental unit of organized society is the family, and it is incomprehensible to believe that the law cannot make some attempt to advance a public policy favoring viable and stable family units, and disfavoring promiscuity. Article 1493 provides for forced heirship in favor of legitimate children, and if none survive, in favor of parents of the decedent under Article 1494. Even if the laws of inheritance could be shown to have a little effect on the rate of illegitimacy, the inheritance laws, by protecting the family as a social, economic and fundamental unit, are not subject to the prohibitions of the 14th Amendment because in practice they may result in some inequalities or that it may fail to bring about the desired result.¹ The realities of a family unit imposes restrictions and controls upon legitimate children. By the same token, the ob-

¹Roschen vs. Ward 279 US 337, 339 (1929)

ligations imposed by family life give rise to the rights enjoyed by parents over their children's property. These restraints and controls, which have been woven into the codal fabric, are not only consistent and pervasive, but they are grounded on compelling logic.

The equal protection clause is not offended so long as there is an acceptable purpose for the law in question, and the classification is a reasonable means for achieving that purpose. The entire Louisiana Civil Code presupposes that the fundamental unit of organized society is the family. The classification of illegitimates in the Louisiana inheritance laws is a part of an overall civilian structure providing for reciprocal rights and duties between parents and their children. The classification promotes family stability by economic and social means, and encourages free commerce in property. It is all part of the public policy of the State favoring family units and disfavoring promiscuity. To hold that the inheritance statutes of the State of Louisiana are unconstitutional, the Court must find invidious, purposeful and arbitrary discrimination, wholly lacking in rationality.²

As stated in *Morey vs Doud*, *supra.*, the rules for testing a discrimination have been summarized as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of

²*Morey vs Doud*, 354 US 457, 1 L Ed 2d 1485, 77 Sup Ct 1344 (1957); *United States vs Burnison*, 339 US 87, 94 L Ed 675, 70 Sup Ct 503 (1950).

police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. "*Lindsley vs Natural Carbonic Gas Co.*, 220 US 61, 78, 79; 55 L Ed 369, 377; 31 Sup Ct 337; Ann Cas 1912C 160."

The fact that Louisiana uses its succession laws to encourage marriages and discourage illegitimacy, which is a valid social aim of the State, and which is related to the right of a State to enact legislation to protect the health, morals and general welfare of its citizens, is clearly within its constitutional province, and does not violate the constitutional guarantees. *Strahan vs Strahan*, 304 F. Supp. 40 (WD La, 1969).

II.

**The Regulation Of Descent And Distribution Of
Real And Personal Property Is Governed By State
Law.**

The estate of the decedent consisted of movable and immovable property all located in Calcasieu Parish, Louisiana. The power of regulating the descent and distribution of property, both real and personal, is derived from and regulated by the State in which the property is located. *Frederickson vs. Louisiana*, 23 How 445, 16 L Ed 192 (1876); *United States vs. Fox*, 94 US 315, 24 L Ed 192 (1950). The States were given this right under the Tenth Amendment to the Constitution of the United States. The title and modes of disposition of real property within the State, whether *inter vivos* or testamentary, are not matters placed under the control of the Federal authority. *United States vs. Fox*, *supra*, *Harris vs Zion Savings Bank & Trust Co.*, 317 US 447, 63 Sup Ct 354, 87 L Ed 390 (1943). The right to inherit property is a statutory right governed by the laws where the property is situated. 26A CJS Descent and Distribution, Par. 6, Page 526.

Under the Louisiana law, the brothers and sisters of the decedent inherited to the exclusion of his illegitimate child. The applicable Louisiana Civil Code Articles provide as follows:

Article 919. Natural children are called to the inheritance of their natural father who has duly acknowledged them, when he has left no descendants or ascendants, nor collateral rela-

tions, nor surviving wife, and to the exclusion only of the State. In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of which shall be determined as is directed in the title: *Of Father and Child*.

Article 202. Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contra-distinguished by the appellation of bastards.

Article 206. Illegitimate children, though duly acknowledged, cannot claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions*.

The transmission of a decedent's property in Louisiana is based upon ancient legal principles, and for centuries has been the basis for the establishment of clear definitive disposition of estates. 33 *Tulane Law Review* 43 (1958), and authorities cited therein. To hold that many years after a person's death, an illegitimate child who may have been unknown at the time could assert an interest in adjudicated property would disrupt the orderly transmission of estates. There would be endless litigation and land titles would never be secure.

In *Straham vs Strahan*, *supra*,³ the Court quoted with approval from *American Land Company vs Zeiss*,⁴ as follows:

"As it is indisputable that the general welfare of society is involved in the security of the titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government * * *

"It (the State) has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subject to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. * * * The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not a matter of national concern or vested in the general government; it remains with the State; and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless it conflict with some special inhibitions of the Constitution, or against natural justice.'

³304 F Supp 40, 43 (1969)

⁴219 US 47, 60, 31 S Ct 200, 204, 55 L Ed 2d 82 (1910)

“* * * Undisclosed and unknown claimants are, to say the least, as dangerous to the stability of titles as other classes. This principle received recognition and was applied in *Hamilton v. Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 691, where it was held to be competent for a State to make provision for promptly ascertaining, by appropriate judicial proceedings, who has succeeding to property upon the death of a person leaving such property within the State. * * *.

“ * * * The power of the State as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown. * * * ”

The Louisiana inheritance laws were the product of deepest legal thought. The distinctions that the writers provided to favor one class of persons over another class, and to favor legitimate children over illegitimate children does not do violence to the Constitution. These laws, and particularly the above codal articles, have worked satisfactorily for almost 200 years and they have been tempered by experience and practicality.

III.

The Holdings In *Levy* And *Glon*a Should Not Apply To Louisiana Succession Laws.

The decisions in *Levy* and *Glon*a⁵ stand for the proposition that the denial of wrongful death benefits merely because of illegitimacy violates the due process and equal protection clauses of the United States Constitution because it constitutes an invidious discrimination. The Louisiana wrongful death statute was invalidated to the extent that it denied illegitimate children or their parents the right to recover on the same basis as the enactment permits where the birth is legitimate. The holdings of *Levy* and *Glon*a decide no more than wrongful death enactment create an unreasonable exemption from tort liability by allowing illegitimacy to bar recovery of tort damages otherwise due. The decisions found only that there was no rational basis for assuming that marriage would be discouraged and illegitimacy encouraged by denying recovery for substantial wrongful death.⁶ In other words, the illegitimate merely acquired a cause of action, and damages would later have to be proved, i.e., loss of love and affection and loss of support, in order to substantiate his claim.

Although these cases held that it is irrational to discriminate against illegitimates in wrongful death statutes, there is a rational basis in so discriminating in inheritance statutes. The distinction in the Louisiana

⁵*Levy vs. State of Louisiana*, 391 US 68; 88 S Ct 1509; 20 L Ed 2d 436 (1968); *Glon*a vs American Guarantee & Liability Insurance Company, 391 US 73; 88 S Ct 1515; 20 L Ed 2d 441 (1968)

⁶*Strahan vs Strahan*, *supra*.

succession laws between legitimate and illegitimate children is not arbitrary or without reasonable basis, but on the contrary, is reasonable and rational, since the State has a paramount interest in encouraging the stability of family, and toward that interest, State legislation to encourage family units must go unchallenged.⁷

IV.

The Decedent Intended That His Estate Be Governed By The Intestate Laws Of Louisiana.

Intestacy laws generally have been founded upon two underlying principles. First, and more historic, is that in order to protect the family unit, property should devolve within that unit. Second, and more modern, is that such laws amount to a statutory will, merely carrying out the intent of the decedent had he written a will.⁸

Ezra Vincent had the right to rely on valid existing State laws to determine whether he should make a will or whether the intestacy laws of the State would govern his estate. He chose the latter as this was the manner he wished that his property be transmitted after his death. Should this Court now hold in effect that his estate shall fall to his illegitimate child, disregarding the decedent's intention, and not give the decedent the right — his personal right — to make this choice would be denying him due process of law.

⁷Murphy vs. Houma Well Service, 43 Fed 2d 509 (5th Circ., 1969)

⁸3 Planoil, *Civil Law Treatise*, Sec. 1700. (La. Law Inst. Transl. 1959); 23 Ame. Jur. 2d 757, p. 10 (1965)

Ezra Vincent made his choice that his estate be governed by the intestate laws of Louisiana, and now that he is dead, his choice cannot be changed.

Had Ezra Vincent intended that his illegitimate child inherit from him and if he wished to change the order of intestacy laws of Louisiana, he could have written a will. The fact that he acknowledged the child before a Notary Public and did not at the same time make a will, indicates that he intended that the intestacy laws apply. Or, if later he wished to make his illegitimate child his heir, another avenue was opened to him. He could have married the natural mother (there was no impediment to a marriage) and thus legitimated his illegitimate child.⁹ Or still further, a third avenue was opened to him if he wanted to change the course of the intestate laws by adopting the child.¹⁰ That he saw fit to do none of these acts indicates strongly that he intended that his estate be governed by the intestate laws of Louisiana, and that his property be inherited by his brothers and sisters.

⁹Article 198, Louisiana Civil Code

¹⁰Article 214, Louisiana Civil Code

V.

Alternatively, Should This Court Decide That Distinctions Made Between Legitimates And Illegitimates Are Unconstitutional For Purposes Of Succession, That Decision Should Only Be Applied Prospectively.

When a man dies leaving legal heirs, the property becomes vested upon his death. Article 940 of the Louisiana Civil Code provides:

"A succession is acquired by the legal heir, who is called by law to the inheritance immediately after the death of the deceased person to whom he succeeds.

"This rule applies also to testamentary heirs, to instituted heirs, and universal legatees, but not to particular legatees."

This principle was affirmed by the Louisiana Supreme Court in *Succession of Simms*, 195 So. 2d 114, 250 La. 177 (1967).

The die was cast at the time of Ezra Vincent's death. The right of inheritance was governed by the laws in effect at the moment of death at which time the rights of inheritance vested. Once real rights have become vested, a new law cannot impose new obligations or new duties with respect to transactions already consummated. The new laws would only affect those transactions which would occur in the future. In others

words they would be applied prospectively only.¹¹

To hold that illegitimate children have the right to come in, years later, and assert a claim to an estate would create havoc to the real property rights in Louisiana. If this Court should decide that illegitimates should inherit irrespective of State law, there are many questions that immediately come to mind and the Courts would have to legislate on many points. Would an illegitimate child of the father who was informally acknowledged have the same rights as one who was formerly acknowledged. Would there be a distinction between natural children as defined by the Louisiana Civil Code and unacknowledged illegitimate children. (Articles 918-920). Would illegitimates inherit equally with legitimate children, or if there were no legitimate children, would they exclude the parents who are forced heirs.

In the area of criminal law, the Court has codified rules which must be followed if the results of police interrogation of a person in jeopardy are to be used in evidence, and these rules were held not only to be not retroactive, but also only applicable to trials that began after the dates on which the respective decisions were announced.¹² But in those cases the parties to the litigation were living, and the evidence if illegally obtained could be excluded in a new trial. But in this present case, that is not the situation at all. Ezra Vincent's rights terminated at his death.

¹¹Vol. 10 Ame. Juris. 956, Bastards par. 153; *Henry vs Jean* 238 La 314; 115 So 2d 363 (1959)

¹²*Johnson vs. New Jersey*, 384 US 719 (1966); *Escobedo vs. Illinois*, 378 US 478 (1964); *Miranda vs. Arizona*, 384 US 436 (1966).

The people of Louisiana have relied on the provisions of the Louisiana Civil Code in deciding whether or not to write a will, and the entire legal profession has relied on these provisions in determining the merchantability of title to real estate. A decision of this Court changing the order of things that have existed in Louisiana for many years would place every land title in the State in jeopardy.

CONCLUSION

It is respectfully submitted that the succession laws of Louisiana making a distinction between legitimate and illegitimate children are constitutional, and that this Court should not extend the limited ruling in *Levy* and *Glon* as to case involving inheritance rights. Alternatively, should this Court feel compelled to invalidate a large section of the Louisiana Civil Code, as well as cast a cloud over the inheritance statutes of other States, the rule should be applied only prospectively to avoid endless litigation.

Respectfully submitted,

NORMAN F. ANDERSON
JAMES A. LEITHEAD
Counsel for Appellee
117 West Broad Street
(P. O. Box 1299)
Lake Charles, Louisiana 70601

The State of Louisiana, as *Amicus Curiae*, supports the position of Appellee in upholding the Constitutionality of the provisions of the Louisiana Civil Code as expressed in the case of *Labine vs. Vincent*, Court of Appeal, Third Circuit, State of Louisiana, 229 So. 2d 449 (1970), and for the reasons expressed herein.

Attorney General
State of Louisiana

CERTIFICATE

I, Norman F. Anderson, member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Brief of Appellee has been deposited this day in the United States mail, postage prepaid addressed to James J. Cox, Attorney at Law, 702 Kirby Street, Lake Charles, Louisiana 70601.

Lake Charles, Louisiana, December ____, 1970.

NORMAN F. ANDERSON

